

11.04.00.00 - RENTAL RATES

11.04.01.00 **General**

Our policy is to charge fair market rent and to rent only to tenants willing and able to pay fair market rent. Fair market rent is the amount of rent that a parcel would command in the open market if offered under the terms and conditions typical of the market for similar properties. Exceptions are made for:

- 1) Tenants whose rental rates are established by Right of Way Contract.
- 2) Residential tenants who originally qualified for affordable rent status prior to March 3, 1981, and who still meet the income requirements. (See Exhibit 11-EX-3, Affordable Rent Tenants.)
- 3) Local rent control (see Section 11.04.05.00).
- 4) For social, environmental, or economic purposes or nonproprietary government use with FHWA's prior written approval.

The district shall set up all state-owned properties that are suitable for renting and are proposed for occupancy as rental accounts and shall charge rent as follows:

- **Property Improved with an Owner-Occupied Residential Unit** - Grantor's rental shall commence on the 16th day after acquisition.
- **Property Occupied by a Business** - A rental grace period (maximum of 60 days) may be granted to the tenant (former owner, inherited tenant) if circumstances warrant. The grace period may commence on the day after acquisition or at some other time during the lease term, depending on whether or not the business has a commitment to pay rent on a replacement site. See Relocation Assistance Chapter, Section 10.06.16.02, for further details.
- **All Other Classes of Property, Including Property Partially Tenant-Occupied** - Rentals shall commence on the day following acquisition.
- **Exceptional Cases** - Adherence to rental rates established by executed R/W Contracts is required. Lease purchase sale of excess land may provide for lease at above market rate. See Excess Land Chapter, Section 16.05.14.00, for further details.

These provisions do not preclude longer free occupancy periods where necessary or desirable with the DDC-R/W's approval. The terms of either the R/W Contract or the transmittal memorandum must indicate, however, that the state is receiving a consideration for the extended rent-free occupancy.

The initial rental rate for all improved properties and rented unimproved properties is in the appraisal report.

- **Tenant-Occupied Properties** - The actual existing rental rate and the estimated fair rental rate are shown.
- **Owner-Occupied Properties** - Only the fair rental rate is shown. The rentals of similar properties shall be the basis for estimating the fair rental rate.

11.04.02.00 **Changing the Rental Rate Shown in the Appraisal**

Although Property Management will normally use the rental rate shown in the appraisal, it has the right to revise the rate if justified by more recent market data. If a change in the rental rate is proposed, the Agent shall submit full and complete documentation supporting the change to the Property Manager. The documentation shall be filed in the rental folder.

11.04.03.00 **Lease Term**

At its discretion, the district may set the length of lease terms up to 5 years, provided rate adjustments are incorporated and 90-day (or less) cancellation clauses are included. Suggested guidelines are as follows:

- **The Property Is in an Active Market Subject to Recent or Anticipated Property Value Increases** - Consideration should be given to keeping the term short (e.g., one year). The advantage is that the rent can be reappraised and adjusted with market changes; the disadvantage is that a yearly reappraisal and renewal are required.
- **Properties Are of Relatively Low Value (e.g., Agricultural and Nominal Leases) and the Market Is Stable** - Consideration should be given to a longer-term lease (e.g., 3-5 years). This reduces the need for annual reappraisal and lease renewal where little or no rental change is likely. In such a case, a rental adjustment lease clause may be omitted.
- **Other Leases (e.g., Commercial and Industrial) in a Stable Market** - Consideration should be given to a longer-term lease (e.g., 3-5 years). To keep up with the rental market, the lease should contain a provision for annual rental escalation. Examples include level or graduated rental step raises (based on projected market trends) and raises tied to a Consumer Price Index. (See page 6 of Form RW 11-2 for standard rent escalation clauses.)

Use of a flat rate must be justified and documented in the file or preapproved in writing by the DD or authorized delegate.

Where possible, all leases should be written with a short termination time (e.g., 90 days or less) to provide maximum flexibility. Leases with terminations longer than 90 days should be written on an exception basis only and must not conflict with project certification schedules. Similarly, multiyear leases must be written to avoid such conflict.

11.04.04.00 **Escalation Clauses**

The assigned Agent shall annually review each lease agreement containing a rental escalation clause. The Agent shall adjust the lease rate according to the terms of the agreement and notify the lessee. The rental file and the RWPS shall be appropriately documented. The Property Manager shall be responsible for reviewing the rental files and the RWPS to ensure compliance.

11.04.05.00 **Local Rent Control**

Occasionally the rental rate policy that calls for rental increases under certain situations may be in conflict with local rental control. If the existing rental rate is substantially below the market rate and the proposed rate of increase exceeds the limits provided in a local rent control ordinance, the district should contact the local government:

- To explain the need for bringing rents to market rate.
- To explain that once rents are at market rate, the limitations prescribed in the rent control ordinance will be observed.
- To attempt to get the local agency's concurrence.

If the local agency does not concur, the district shall comply with the local ordinance.

11.04.06.00 **Owners Retain Improvements**

If the R/W Contract requires the owner to remove retained improvements within a short time period (e.g., 90 days), a rental rate providing a current market return on the acquired property is charged. The rental rate shall not include a return on retained improvements. If the acquired land is of such size and irregular shape (e.g., narrow strips) that the market rental rate cannot be readily determined, the monthly rental rate may be set at one percent (1%) of the payment for the acquired property.

If any structural improvement retained by the grantor remains on the acquired property past 90 days, or the term agreed to, after the close of escrow, the district shall charge market rent for such improvement and the land previously purchased from the grantor.

NOTES: